IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5872 of 2005
Date of Decision : November 28, 2006.

Ashok Kumar Bhalla ..... Petitioner

Vs.

Kulbhushan Kumar Munrai & others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Akshay Bhan, Advocate
for the petitioner.

Mr.Sanjiv Manrai, Advocate
for the respondents.

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P.S.Patwalia, J. :

The present revision petition has been filed by the petitioner, plaintiff in the suit vide which an application filed by the petitioner for restoration of an earlier application filed by him under Order 9 Rule 9 CPC which was dismissed in default as also for restoration of the civil suit which was dismissed in default, has been dismissed by the trial court.

Briefly the facts leading to the filing of this revision petition are that the suit filed by the petitioner was dismissed in default on 18.04.2003. The petitioner filed an application for restoration of the same on 16.7.2003. Along with the said application the petitioner also filed a separate application seeking condonation of delay in filing the application for restoration. Both these applications have been placed on record of this civil revision as Annexure P-1 (colly). The said application was dismissed in default on 15.11.2003. It is therefore that the petitioner filed yet another

application on 28.1.2004 seeking restoration of the earlier application filed by him which was also dismissed in default. Along with the said application the petitioner also filed an application under Section 5 of the Limitation Act seeking condonation of delay for filing the aforementioned second application. Both these applications have been placed on the record of this revision petition as Annexure P-2 (colly).

The trial court considered the second application seeking restoration of the first application as also the civil suit. On the basis of a judgment rendered by the Jammu and Kashmir High Court in ***B.S.Lamba vs. M.A.Kanth*** reported as ***AIR 1990 Jammu and Kashmir 79*** the trial court found that the second application for restoration has also to be filed within 30 days of the dismissal of the first application for restoration. The same was however filed after 30 days and hence was belated. The Court also noted the various dates fixed in the case and dismissed the said application. A reading of the order of the trial court however shows that the court was not conscious and has therefore not dealt with the application seeking condonation of delay filed along with the application dated 28.1.2004.

Before me learned counsel for the petitioner has contended that on the strength of judgment rendered by the Allahabad High Court in ***M/s C.P.Properties Ltd. vs. M/s Matadin Bhagwan Dass and others*** reported as ***1993 Civil Court Cases 484*** and the judgment of the Gauhati High Court in ***Haridas Das vs. Smt. Santa Rani Das and others*** reported as ***1993 Civil Court Cases 627*** that the limitation period for filing of an application seeking restoration of an application filed under Order 9 Rule 9 is governed by the residuary Article 137 of the Limitation Act and is therefore three years. On the other hand learned counsel for the respondents on the strength of the judgment of Jammu and Kashmir High Court in B.S.Lamba's case (supra) has contended that the limitation in such a situation also would have to be 30 days.

After going through the pleadings of the parties I am of the opinion that the order of the trial court cannot be sustained for the reason that even if it is assumed that the limitation for filing the first application was 30 days yet the petitioner had filed an application seeking condonation of delay in filing the application dated 28.1.2004 which would then have to be considered. It has been stated therein that the petitioner only came to know of the order dismissing his first application in default on 27.1.2004 and on the very next day the present application was filed. This application for seeking condonation of delay has not been considered by the trial court at all. I am of the opinion that even if the limitation is assumed to be of 30 days yet the trial court was bound to consider the application seeking condonation of delay filed by the petitioner. Therefore the order of the trial court cannot be sustained and is set aside.

The trial court would again now consider the application dated 28.1.2004 filed by the petitioner, first on the question as to whether the limitation for filing such an application would be 30 days or three years. In the event that the finding on this question is recorded against the petitioner then the trial court would proceed to consider the application under Section 5 of the Limitation Act filed by the petitioner along with the second application dated 28.1.2004. The present revision petition is accordingly disposed of in the aforementioned terms.

The parties will appear before the trial court on December 05, 2006. The trial court endeavour to decide the application within a period of three months from the date a certified copy of this order is presented before the court.

November 28, 2006 (P.S.Patwalia)
monika Judge